

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Tonkovich v. Kansas Board of Regents

254 F.3d 941 (10th Cir. 2001) · No. No. 00-3136 · Decided June 20, 2001

SUMMARY

The United States Court of Appeals for the Tenth Circuit affirmed dismissal of Emil Tonkovich's remaining 42 U.S.C. § 1983 reinstatement claim against the University of Kansas Chancellor. The court held that its prior decision granting the individual defendants qualified immunity controlled under stare decisis and law of the case, and that Tonkovich had not alleged a due process or equal protection violation. The court also upheld dismissal without prejudice of the supplemental state-law claims and deemed the recusal issue moot.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	McKay, Circuit Judge; Kelly, Circuit Judge; Murphy, Circuit Judge
JURISDICTION	Federal
DECIDED	June 20, 2001
DOCKET	No. 00-3136
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the dismissal under Federal Rule of Civil Procedure 12(b)(6) of his remaining 42 U.S.C. § 1983 reinstatement claim against the University Chancellor in his official capacity, the dismissal without prejudice of supplemental state-law claims, and the district judge's refusal to recuse.
STANDARD OF REVIEW	The Rule 12(b)(6) dismissal was reviewed de novo. The dismissal of supplemental state-law claims and the refusal to recuse were reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Emil A. Tonkovich v. Kansas Board of Regents, University of Kansas, James Turner, William R. Docking, Kenneth C. Havner, Robert V. Talkington, Robert C. Caldwell, Tom E. Hammond, John B. Hiebert, Karen Krepps, John G. Montgomery, Phyllis Nolan, Frank C. Sabatini, Sidney Warner, Gene A. Budig, Delbert M. Shankel, P. Delbert Brinkman, David E. Shulenburger, Robert H. Jerry II, Sidney A.

Shapiro, Reginald L. Robinson, A. Kimberly Dayton, Elinor P. Schroeder, Ellen E. Sward, Sandra C. McKenzie, Ann Victoria Thomas, Rose A. Marino, H. Rutherford Turnbull III, Nancy Ann Dahl, E. P. Johnsen, John Michel, Delores Ringer, Robert Hemenway

TOPICS

motions to dismiss section 1983 due process equal protection appellate procedure

PRACTICE AREAS

civil procedure constitutional law civil rights administrative law

QUESTIONS PRESENTED

1. Whether the remaining official-capacity claim for reinstatement against the University Chancellor stated a claim under 42 U.S.C. § 1983 for violation of substantive due process, procedural due process, or equal protection.
2. Whether the district court abused its discretion by dismissing the supplemental state-law claims after dismissing all federal claims.
3. Whether the district court abused its discretion by declining to recuse, and whether reassignment was warranted.

HOLDINGS

1. The complaint failed to state a cognizable § 1983 claim for reinstatement because *Tonkovich I* held that the alleged conduct did not violate his procedural due process, substantive due process, or equal protection rights, and that holding controlled under *stare decisis* and the law-of-the-case doctrine.
2. The district court acted within its discretion in dismissing the supplemental state-law claims without prejudice after dismissing all federal claims over which it had original jurisdiction.
3. The recusal issue was moot because the court's disposition eliminated the federal and state claims from federal court, leaving no basis for the requested prospective relief.

KEY QUOTATIONS

*“In summary, we agree with the district court that the thorough holdings of *Tonkovich I* require dismissal of Plaintiff's reinstatement claim against the University Chancellor.”* (at 944)

“Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.” (at 945)

FACTUAL BACKGROUND

Following administrative proceedings, *Tonkovich* was fired from his tenured teaching position at the University of Kansas School of Law for allegedly engaging in a sexual act with a student after discussing grades. He sued the University, the Board of Regents, and numerous administrators and professors, alleging state-law violations

and violations of substantive and procedural due process and equal protection under 42 U.S.C. § 1983. He sought monetary and equitable relief, including reinstatement.

PROCEDURAL HISTORY

After a lengthy administrative process, Tonkovich was terminated from his tenured position at the University of Kansas School of Law and filed federal and state claims against the University, the Board of Regents, and numerous officials and professors. The district court dismissed most official-capacity claims on Eleventh Amendment grounds, and the Tenth Circuit previously granted the individual defendants qualified immunity in *Tonkovich I*. On remand, the district court dismissed the remaining reinstatement claim against the Chancellor under Rule 12(b)(6), dismissed the supplemental state-law claims without prejudice, and declined to recuse. The Tenth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- *Tonkovich v. Kansas Board of Regents*, 159 F.3d 504 (10th Cir. 1998)
- *Sutton v. Utah State School for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999)
- *United States v. Meyers*, 200 F.3d 715, 720 (10th Cir. 2000)
- *McIlravy v. Kerr-McGee Coal Corp.*, 204 F.3d 1031, 1034 (10th Cir. 2000)
- *Anglemyer v. Hamilton County Hospital*, 58 F.3d 533, 541 (10th Cir. 1995)
- *Thatcher Enterprises v. Cache County Corp.*, 902 F.2d 1472, 1478 (10th Cir. 1990)
- *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966)
- *Bateman v. City of West Bountiful*, 89 F.3d 704, 709 n.5 (10th Cir. 1996)
- *Doe v. Bagan*, 41 F.3d 571, 577 (10th Cir. 1994)